IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 401 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAVITABEN TRIKAMBHAI SARVAIYA

Versus

NAGAR PRATHMIK SIKSAN SAMITI

Appearance:

1. Special Civil Application No. 401 of 1999

MR MD RANA for Petitioner No. 1

MS SEJAL K MANDAVIA for Respondent No. 1

MR HARSHAD J SHAH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 06/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Rana for the

petitioner; Ms. SK Mandavia for respondent NO. 1 and Mr.H.J.Shah for respondent no.2. As per the facts of the petitioner's case, the petitioner was appointed as a casual peon on daily wage basis on 17.11.1970. She was appointed on temporary basis after 1970 by issuing an order by the 1st respondent on 13th August, 1974 and was superannuated on 30.11.1977 but since she was not paid the retiral benefits after her superannuation, such as pension and arrears of retirement benefits with higher grade, she has approached this court by way of this petition.

After this petition was admitted by this court on 19.11.1999, following order on 10th March, 1999 as regards interim relief:

" Heard the learned advocates for the respective parties on interim relief.

2. The petitioner's right to receive the retiral benefits like Gratuity, Pension, etc., is not disputed. The question is whether the said burden should be shouldered by the respondent no.1 herein or by the respondent NO. 2. It is also not disputed that the petitioner was an employee of the respondent no.1 herein and it is the primary liability of the petitioner no.1 to pay the amount of retiral benefits to the petitioner herein. The respondent NO.1 has calculated the said amount to be Rs.36,491.00 upto December, 1997. In that view of the matter, respondent No.1 is ordered to pay the aforesaid sum of Rs.36,491.00 to the petitioner within a period of six weeks from today. The respondent No.1 shall also calculate the amount of arrears of pension for the period from January, 1998 to February, 1999 and shall pay the same to the petitioner within a period of eight weeks from today. The petitioner shall also be paid the pension regularly, due and payable from 1st March, 1999. Further, the respondent no.1 shall also pay the amount of difference of salary pursuant to the grant of higher pay scale, as reflected in the communication dated 19th May, 1998 (Annexure "D" to the petition) within a period of twelve weeks from today.

3. If the respondent No.1 has a claim for reimbursement of the aforesaid amount from the respondent no.2 herein, the same may be recovered by the respondent No. 1 from the respondent no.2

in accordance with law."

In view of the aforesaid interim order made by this court on 10.3.1999, almost all the retiral benefits as directed by this court have been paid to the petitioner from respondent No. 1. In case, if there is any dispute between the respondent No.1 and respondent no.2 and if the respondent no.1 is having any claim for reimbursement of the amount paid by it to the petitioner, then it is open for respondent no.1 to recover the same from respondent no.2 in accordance with law as observed by this court in the order dated 10.3.1999.Therefore, considering the interim order dated 10.3.1999, according to my opinion, now nothing further is required to be done and as such, the present petition is not surviving and is required to be disposed of as not surviving. Accordingly, this petition is disposed of as not surviving with a liberty in favour of the petitioner for revival of this petition in case of any difficulty. Rule is made absolute in terms of the interim directions issued by this court on 10.3.1999. There shall be no order as to costs.

Dt.6.9.2003. (H.K. Rathod,J.)

Vyas